75-6811

Supreme Court, U. S.
FILED
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MICHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT

OF THE

UNITED STATES

WASHINGTON, DISTRICT OF COLUMBIA

October Term 1975

Docket No.....

HERMAN J. GRAYSON, Petitioner,

vs.

JUDGE ROBERT A. WENKE,
LOS ANGELES SUPERIOR COURT, Respondent, and

JUDGE LESTER W. ROTH,
CALIFORNIA SECOND APPELLATE DISTRICT COURT,
Co-Respondent, and

JUDGES ORELL W. TRASK and JOSEPH T. SNEED,
U.S. NINTH CIRCUIT COURT OF APPEALS,
Co-Respondents, and

CALIFORNIA STATE BOARD OF ACCOUNTANCY,
Real Party of Interest.

From The Ninth Circuit Court of Appeals

(1) MOTION FOR LEAVE TO FILE PETITION FOR WRIT OF MANDAMUS,
(2) MOTION TO TAX AS COST THE PRINTING OF THE APPENDIX.
(3) AN APPLICATION FOR AN ORDER TO PROVIDE PETITIONER WITH PROCEDURAL DUE PROCESS OF LAW AS SET FORTH IN APPELLATE RULE 21 BY WAY OF PETITION FOR WRIT OF MANDANUS,
(4) APPENDIX.

Herman J. Grayson, Petitioner
P.O. Box 961
Dallas, Texas 75221
1-214-233-0997

IN THE
SUPREME COURT OF THE UNITED STATES
WASHINGTON, DISTRICT OF COLUMBIA

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U.S. NINTH CIRCUIT COURT OF APPEALS,
Co-Respondents, and

CALIFORNIA STATE BOARD OF ACCOUNTANCY,
Real Party of Interest.

MOTION FOR LEAVE TO FILE PETITION FOR WRIT OF MANDAMUS

TO THE HONORABLE CHIEF JUSTICE and ASSOCIATE JUSTICES, and the CLERK and STAFF; Greetings:

Petitioner moves the Court for leave to file the attached Petition For Writ of Mandamus; and for an order directing Co-Respondents

Honorables Orell W. Trask and Joseph T. Sneed
United States Ninth Circuit Court of Appeals

to provide Petitioner with procedural due process of law as set forth in Appellate Rule 21.

October 29th 1975

Respectfully submitted,

Herman J. Grayson
.....
Herman J. Grayson, Petitioner.

IN THE
SUPREME COURT OF THE UNITED STATES
WASHINGTON, DISTRICT OF COLUMBIA

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U.S. NINTH CIRCUIT COURT OF APPEALS,
Co-Respondents, and

CALIFORNIA STATE BOARD OF ACCOUNTANCY,
Real Party of Interest.

MOTION TO TAX AS COST THE PRINTING OF THE

APPENDIX - $125.37

TO THE HONORABLE CHIEF JUSTICE and ASSOCIATE JUSTICES, and the CLERK and STAFF; Greetings:

Petitioner moves the Court to tax as cost the printing of the appendix in the amount of $125.37. The appendix was printed by the Kwik Kopy company, 6005 Berkshire Lane, Dallas, Texas 75225, 1-214-691-8325, Invoice No. 58411, dated 14 September 1975. Petitioner duly paid Invoice by check No. 701, 16 September 1975, bank No. 88-774/1113.

October 29th 1975

Respectfully submitted,

Herman J. Grayson
.....
Herman J. Grayson.

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vs.

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CALIFORNIA SECOND APPELLATE DISTRICT COURT,
Co-Respondent, and

JUDGES ORELL W. TRASK and JOSEPH T. SNEED,
UNITED STATES NINTH CIRCUIT COURT OF APPEALS,
Co-Respondents, and

CALIFORNIA STATE BOARD OF ACCOUNTANCY,
Real Party of Interest.

AN APPLICATION FOR AN ORDER TO PROVIDE PETITIONER WITH PROCEDURAL DUE PROCESS OF LAW AS SET FORTH IN APPELLATE RULE 21 BY WAY OF PETITION FOR WRIT OF MANDAMUS.

TO THE HONORABLE CHIEF JUSTICE and ASSOCIATE JUSTICES, and the CLERK and STAFF; Greetings:

Petitioner makes application for an order directed to the Honorable Orell W. Trask and Joseph T. Sneed, U.S. Ninth Circuit Court of Appeals, in instruction to provide Petitioner with procedural due process of law as set forth in Title 28 U.S. Code, Federal Rules of Appellate Procedure, Title V. Extraordinary Writs, Rule 21, paragraph (b) by ordering an answer to the Petition For Writ of Mandamus, U.S. Ninth Circuit Docket No. 74-3342, be filed by Respondents and by setting date for

oral arguments. Petitioner in support of his application relates to the Supreme Court by way of petition for writ of mandamus as follows:

PURPOSE OF THE PROCEEDINGS

The purpose of the administrative and judicial proceedings is the issuance of the State of California Certified Public Accountant certificate to Petitioner.

1: DECISIONS and OPINIONS BELOW

Number	Proceedings Below	Appendix
74-3342	U.S. Court of Appeals-9th Cir. motion to provide due process denied 8 August 1975	A-1.1
74-3342	U.S. Court of Appeals-9th Cir. petition for writ of mandamus denied 8 July 1975	A-1.2
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2: STATEMENT OF THE GROUNDS

The Supreme Court has jurisdiction in this case on the grounds (1) that Petitioner is entitled to procedural due process of law as set forth by statute and constitution and (2) that the courts below failed to discharge their duty in mandamus proceedings.

2:1 JUDGMENT TO BE REVIEWED

Petitioner requests review of the decisions of the U.S. Court of Appeals, Ninth Circuit, Docket No. 74-3342, by Circuit Judges Orell W. Trask and Joseph T. Sneed filed as follows:

Denied, filed 8 July 1975, docketed 10 July 1975, petition for writ of mandamus, (Appendix A-1.2) and

Denied, filed 8 August 1975, motion to reverse the order of 8 July 1975 that denies the petition for writ of mandamus and motion to provide procedural due process of law as set forth in Appellate Rule 21 (Appendix A-1.1).

3: STATEMENT OF QUESTIONS PRESENTED FOR REVIEW

The questions presented this Court are whether Petitioner has received due process of law at the administrative hearing, at the trial, and at the appellate courts, and whether duty was discharged in the mandamus proceedings, and whether such decisions are so devious and wrongful in character as to cause the condition of involuntary servitude upon Petitioner in satisfaction of the work experience requirements of the occupational licensing law. These questions arrange into the two procedural classification of failure in the service and delivery prescription and falsifications in the substantial evidence.

3:1 FAILURE IN SERVICE AND DELIVERY PRESCRIPTION

3:1.1 Failure by Respondent to make service of the Proposed Decision as prescribed by California Government Code Section 11517b.

3:1.2 Failure by Respondent to make delivery of the Decision as prescribed by California Government Code Section 11518.

3:1.3 Failure by Respondent to perfect an effective Decision as prescribed by California Government Code Section 11519a.

3:2 FALSIFICATION IN THE SUBSTANTIAL EVIDENCE

The substantial evidence does not support the findings of fact and decision for reason of falsifications therein and admission thereto by Respondent as provided by California Code of Civil Procedure Section 462.

3:3 FAILURE TO DISCHARGE DUTY IN MANDAMUS PROCEEDINGS

3:3.1 Failure to examine the evidence specified in California Government Code Section 11517b 11518, and 11519a and the discrepancies in the substantial evidence.

3:3.2 Failure of the Opinion because of substantial and defective errors in theory and practice.

4: CITATION OF THE LAW INVOLVED

4:1 UNITED STATES CONSTITUTIONAL PROVISIONS

The jurisdiction of the Supreme Court to review the judgement below is founded upon Title 28 U.S. Code Section 1651a that provides

> "The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law."

and upon U.S. Constitution, Amendment Article XIV, Section 1 that provides

> "nor shall any State deprive any person of life, liberty, or property, without due process of law."

and upon U.S. Constitution, Amendment Article XIII, Section 1 that provides

> "neither slavery nor involuntary servitude, ...shall exist within the United States, or any place subject to their jurisdiction."

4:2 CALIFORNIA STATUTORY PROVISIONS

Petitioner is entitled to procedural due process of law through the following California statutory provisions, as amplified in Reasons 2 through 9:

The State of California Government Code is also known as the Administrative Procedure Act and also known as A.P.A.; and is titled Government Code, Title 2, Division 3, Part 1, Chapter 5, sub-titled Administrative adjudication, Sections 11500 to 11528, as set forth in the year 1971. The California Accountancy Act is found in the Business and Professions Code, Division 3, Chapter 1, Article 5, Sections 5080 to 5090, sub-titled

Certificates, Information and Records, as set out in the year 1966, and Accountancy Board Rule 11.5.

CALIFORNIA GOVERNMENT CODE

Section 11504: "a hearing to determine whether a right, authority, license or privilege should be granted, issued, or renewed shall be intiated by filing a statement of issues" (Appendix C)

Section 11518: "the decision shall be in writing and shall contain findings of fact, a determination of the issues presented..." (Appendices B-1 and B-2)

Section 11517b:..."a copy of the proposed decision shall be served by the agency on each party in the case and his attorney." (Appendix B-2)

Section 11518: "Copies of the decision shall be delivered to the parties personally or sent to them by registered mail." (Appendices B-1 and B-2; this is the ultimate or final decision; delivery may be by registered or certified mail).

Section 11519a: "The decision shall become effective 30 days after it is delivered or mailed to respondent...."

Section 11523: "Judicial review may be had by filing a petition for a writ of mandamus in accordance with the provisions of the Code of Civil Procedure...Except as otherwise provided in this section any such petition shall be filed within 30 days after the last day on which reconsideration can be order." (Reasons 3, 4, and 5)

CALIFORNIA CODE OF CIVIL PROCEDURE

Section 343: "An action for relief not hereinbefore provided must be commenced within four years after the cause of action shall

have accrued."

Section 462: Admission. "Every material allegation of the complaint not controverted by the answer, must, for the purposes of the action, be taken as true.."

Section 1094.5b: "Abuse of discretion is established if...the order or decision is not supported by the findings, or the findings are not supported by the evidence."

5: STATEMENT OF THE CASE

5:1 CASE THEORY IN JURISDICTION

This application is grounded upon United States ex rel Maine Potato Growers & Shippers Assn. et al vs. Interstate Commerce Commission et al, 88 F2d 780-784.

"2. Mandamus reaches only question of whether existing duty was discharged and not soundness or justice of result reached."

Petitioner clearly makes the distinction between procedural due process of law and justice rendered. Petitioner does not make application for a special kind of justice; Petitioner makes application for procedural due process to which he is entitled by statute, constitution, and failure of the courts below to discharge their duty in mandamus proceedings.

5:2 UNITED STATES JURISDICTION THROUGH FAILURE OF COURTS BELOW TO DISCHARGE THEIR DUTY IN MANDAMUS PROCEEDINGS

The basis for federal jurisdiction in the court of first instant is on ground that the courts below have not discharged their duty in mandamus proceedings. Specifically, Judge Roth, in abuse of judicial discretion failed to discharge his

duty in mandamus proceedings and the United States courts cannot relie upon the Opinion of the California Court of Appeal (Appendix A-4).

5:2.1 U.S. COURTS CANNOT RELIE UPON CALIFORNIA COURT OPINION

The United States courts cannot relie upon the Opinion of the California Court of Appeal on ground (1) that the opinion is in error in theory and practice (amplified in Reasons 2 through 9) and (2) the opinion was issued without an examination of the evidence specified as due process of law in California Government Code Sections 11517b, 11518, and 11519a and the Respondent's admission of discrepancies in the substantial evidence found in findings of fact VI of the Proposed Decision (Appendix B-2, page 2) all of which are related by Petitioner in his petition for writ of mandamus.

5:2.2 RESPONDENT EXCUSED OUT OF COURT

At the oral hearing (Appendix A-3) on 14 March 1974, Deputy Attorney General Ronald M. Weiskopf made request for oral argument; whereupon, Judge Roth denied oral argument and excused out of the court room Ronald Weiskopf; who departed taking with him all his papers and any evidence to support Respondent's claims concerning Government Code Sections 11517b, 11518, 11519a, and Respondent's admission to discrepancies in the substantial evidence found in findings of fact VI of the Proposed Decision.

5:2.3 OPINION ISSUED WITHOUT EXAMINATION OF STATUTORY PRESCRIBED EVIDENCE SET FORTH AS DUE PROCESS OF LAW

Judge Roth issued his opinion without an examination of the evidence specified as due process of law in Government Code Section 11517b, 11518, 11519a, and Respondent's admission to discrepancies in the substantial evidence found in

findings of fact VI of the Proposed Decision. The Opinion cannot be relied upon as a rational and valid judgment. Petitioner is denied procedural due process of law by a prejudicial opinion, that induces others, in reliance upon the opinion, to deny Petitioner his legal right. Judge Roth failed to discharge his duty in mandamus proceedings and proceeds in abuse of judicial discretion.

5:2.4 WITNESS TO ABUSE OF JUDICIAL DISCRETION

Witness to the abuse of judicial discretion are the Associate Justices Lynn D. Compton and Edwin F. Beach, Court of Appeal, Second Appellate District, Division Two, California State Building, Room 1201, Los Angeles, California 90012 and Deputy Attorney General Ronald M. Weiskopf, 600 California State Building, 217 West First Street, Los Angeles, California 90012.

5:2.5 PETITIONER REFUSED TRANSCRIPT OF RECORD

Two tape recordings were made of the oral arguments on March 14, 1974, at the California Court of Appeal. Petitioner made request and is refused a transcript by Court Clerk Clay Robbins, Jr. on ground that the Court is not a court of record.

5:3 STATEMENT OF ACCOUNTANCY AND AUDITING EXPERIENCE SUBMITTED BY PETITIONER TO THE BOARD AS QUALIFYING UNDER THE ACCOUNTANCY ACT

	hours		months
Experience in public accountancy	4371	=	26.2
Expreience in public accountancy			4.0
Total in public accountancy			30.2
Internal auditing experience			8.0
Governmental accounting experience			12.5
Business and corporate accountancy			56.0
Total experience submitted to Board as qualifying under Accountancy Act Sections 5083 and 5084 and Rule 11.5			106.7 (9 years)

6: REASONS FOR GRANTING THE WRIT OF MANDAMUS

6:1 REASON 1

ADMINISTRATIVE AND COURT DECISIONS RESULT IN INVOLUNTARY SERVITUDE

Petitioner is deprived of due process of law as set forth by the experience requirements of Accountancy Act Section 5083, California Business and Professions Code. Petitioner does not know what the experience requirements are of the law and neither does the Petitioner know how to satisfy the experience requirements. Neither the Respondent nor the Courts have set forth these requirements in their proceedings; and neither the Respondent nor the Courts have set forth a schedule showing satisfaction of the experience requirements in their proceedings.

This failure in due process of law is because Accountancy Act Section 5083 prescribes a definite term of work experience (minimum two years), and Respondent has adopted Rule 11.5 that is used to modify that work experience, that modifies the term of work experience to an indefinite term. In practice of the State Board it is the disallowance of work experience prescribed as qualifying under the Accountancy Act Section 5083 and the prescription of additional work experience under Rule 11.5. In order to satisfy the experience requirements prescribed by the State Board, Petitioner must submit to an indefinite term of involuntary servitude. Petitioner submits that the practices of the State Board result in involuntary servitude contrary to the provision of the United States Constitution, Amendment XIII, Section 1, the involutary servitude clause.

6:2 REASON 2
NON SERVICE OF THE PROPOSED DECISION
GOVERNMENT CODE SECTION 11517 (b)

The California Appellate Court's Opinion contains substantial and defective errors in theory and practice. The Appellate Court in it's Opinion states as a conclusion (Appendix A-4, page 4, lines 16-22):

> "However, it is well settled that neither due process nor the Administrative Procedure Act compels that the hearing officer's proposed decision be served upon the parties if the agency adopts the proposed decision. (Government Code 11517(b); Dami v Dept. Alcoholic Bev. Control, 176 Cal. App. 2d 144, 147-48 (1959); Leeds v Gray, 109 Cal. App. 2d 874, 884 (1952)."

The conclusion of the Appellate Court is discussed by Warren H. Deering, in California Administrative Mandamus, Part II, Section 5:35, pages 55-6. Deering summarizes:

> "Due process does not require that the accused receive a copy of the proposed findings and decision or that he be given an opportunity to offer argument regarding them"

The key words of the quotation are accused and receive. The word accused means that the author is discussing disciplinary action originating under the Statement of Accusation of the Administrative Procedure Act Section 11505. This is contrary to Petitioner's case originating under the granting provision of the Administrative Procedure Act Section 11504. The Leeds and Dami cases cited are disciplinary cases.

The word receive is not the word service. In the Dami case service of the proposed decision was made upon the accused. The agency is not relieved in its prescribed duty to make service of the proposed decision. The author clearly sets forth the rule that in disciplinary cases the service of the proposed decision does not have to be received by the accused.

Clearly, a leading authority on California administrative proceedings does not support the Appellate Court in its opinion. The Appellate Court is in substantial error in citing disciplinary cases as though the substance applies to granting cases.

Petitioner relates that Government Code Section 11517b prescribes as follows:

> "a copy of the proposed decision shall be served by the agency on each party in the case and his attorney."

California Appellate Rule 40d provides:

> "The word 'shall' is mandatory....."

California law does not support the Appellate Court's conclusion. Petitioner relates that in Dami v Dept. of Alcoholic Bev. Control, 176 Cal. App. 2d 144; 1 Cal. Reptr. 213, on page 215, it is cited that

> "the Department SERVED the proposed decision upon appellant concurrently with the actual decision."

The Dami case does not support the Appellate Court's conclusion. In Leeds v Gray, 109 Cal. App. 2d 874 (1952); 242 P2d 48, on page 49 it is cited that

> "The hearing officer made no findings, decision, or recommendation" (no pro-

posed decision issued), and that "The matter was heard on the transcript of the proceeding before the board....." On page 53 it is cited "So far we have been discussing the case as if the Administrative Procedure Act applied to these proceedings. But is does not apply."

Clearly, the Leeds case does not support the Appellate Court

6:3 REASON 3
NON DELIVERY OF THE DECISION TO PETITIONER BY EITHER REGISTERED OR CERTIFIED MAIL GOVERNMENT CODE SECION 11518 and THE LAW OF AGENCY

The California Appellate Court's Opinion contains substantial and defective errors in theory and practice. The Appellate Court in its Opinion states as a conclusion (Appendix A-4, page 4, lines 22-23 and page 5, lines 1-3):

"The fact that the ultimate decision was mailed by certified mail rather than registered mail is immaterial since Government Code Section 8311 provides that certified mail satisfies the mailing requirements of Government Code Section 11518."

Petitioner relates that Government Code Section 11518 prescribes as following:

"Copies of the decision shall be delivered to the parties personally or sent to them by registered mail."

California Appellate Rule 40d provides;

"The word 'shall' is mandatory....."

Petitioner relates that he was not delivered a copy of the Decision and that Respondent is unable to produce a registered or certified mail receipt bearing the signature of Herman J. Grayson in evidence that the Decision was delivered to him.

The law does not support the Appellate Court conclusion on delivery of the Decision, and the Respondent is unable to produce either a registered or a certified mail receipt bearing the signature of Herman J. Grayson in evidence that the Decision was legally delivered to Petitioner in compliance with Government Code Section 11518.

Petitioner further relates that his attorney during the administrative hearing is not Respondent's agent to perform Respondent's legal duty in compliance with prescription by Government Code Section 11518. The Appellate Court's Opinion is in error for reason of the law agency and Petitioner's attorney cannot be made to appear as Respondent's agent.

6:4 REASON 4
FILING OF THE PETITION FOR WRIT OF MANDAMUS AND THE STATUTES OF LIMITATION GOVERNMENT CODE SECTION 11523

The California Appellate Court's Opinion contains substantial and defective errors in theory and practice. The Appellate Court Opinion concludes (Appendix A-4, page 5, lines 4-10)

"Although the time requirements of Government Code 11523 are akin to statues of limitations and not jurisdictional (Ginns v Savage, 61 Cal. 2d 520)(1964) the aggrieved party must prosecute his action with reasonable diligence, and he may not indefinitely suspend the running of the statutes of limitation

-30- days by delaying his request for a writ of mandate."

Petitioner relates that Government Code Section 11523 provides as following:

"Judicial review may be had...Except as otherwise provided in this section any such petition shall be filed within 30 days after the last day on which reconsideration can be ordered."

Petitioner relates that due to the fact that Respondent has failed to make SERVICE by a third party of the Proposed Decision as prescribed by Government Code Section 11517b on

(1) Herman J. Grayson (Petitioner) and on
(2) Community Legal Assistance Center (Petitioner's attorney)

and that Respondent has failed to make DELIVERY by either Registered or Certified mail of the final Decision as prescribed by Government Code Section 11518 on

(3) Herman J. Grayson (Petitioner)

and that Respondent has failed to perfect an effective decision by failure to make DELIVERY by either Registered Mail or Certified Mail of the Decision as prescribed by Government Code Section 11519a on

(3) Herman J. Grayson (Petitioner),

that Respondent has the present capacity to order reconsideration at any time and that the time limitation provision does not apply in this case.

Petitioner relates in his original Petition For Writ of Mandamus addressed to the Superior Court that reconsideration is founded upon there being due process of law in the proceedings; for

reason that there has been failure in due process of law in service and delivery by registered mail or certified mail, the reconsideration provision is not expired and does not apply. Petitioner relates that there are important matters that can be brought before the Board of Accountancy with the Board having present legal capacity to order reconsideration; that important matter is to provide Petitioner with due process of law in service of the Proposed Decision and delivery by registered or certified mail of the final Decision. Petitioner relates that Respondent can order reconsideration on these important matters, prescribed by law as part of the proceedings; therefore, the time limitation provision does not effect Petitioner's right to judicial review.

APPLICATION OF THE TIME LIMITATION OF CODE OF CIVIL PROCEDURE SECTION 343

Code of Civil Procedure Section 1109

"Except as otherwise provided in this Title, the provisions of Part 2 of this Code are applicable to and constitute the rules of practice in the proceedings mentioned in this Title."

Code of Civil Procedure Section 343

"An action for relief not hereinbefore provided for must be commenced within four years after the cause of action shall have accrued."

Petitioner relates that the time limitation prescribed in the Code of Civil Procedure applies and the time accrues from the date of the Decision on December 22, 1971, for reason that there is failure by the Respondent to provide due process of law as prescribed by Government Code Sections 11517b, 11518, and 11519a in service and delivery by registered or certified mail to

Petitioner of the Proposed Decision and (final) Decision. Petitioner relates that he is within the time limitation prescribed by the Code of Civil Procedure Section 343, and Petitioner has the right to judicial review.

6:5 REASON 5

THE COURT SHOULD ORDER RESPONDENT TO PRODUCE PROOF OF SERVICE AND DELIVERY

Petitioner petitioned the Superior Court and Petitioner appeared before the Appellate Court, and Petitioner requested that the Appellate Court order Respondent to produce compliance with Government Code Section 11517b by exhibiting two Certificates of Service excuted by a third party that the Proposed Decision were duly served on

(1) Herman J. Grayson (Petitioner) and on
(2) Community Legal Assistance Center (Petitioner's attorney)

and that Respondent produce compliance with Government Code Section 11518 and 11519a by exhibiting either a registered or a certified mail receipt bearing the signature of Petitioner that the final Decision was duly delivered to

(3) Herman J. Grayson (Petitioner).

Whereupon, Judge Roth denied argument and proof and excused out of the courtroom Ronald M. Weiskopf, Deputy Attorney General; who departed taking with him all his papers and any evidence to support Respondent's claims concerning the evidence specified by Code in service of the proposed decision, delivery of the final decision, and perfecting an effective decision. Judge Roth issued his opinion without examination of the evidence and proof specified by code as mandatory to due process of law.

In the Appellate Court's Opinion on the time limitation of Government Code Section 11523 (Appendix A-4, page 5, line 6) a case is cited as support, Ginns v Savage, 61 Cal. 2d 520 (1964); 393 P2d 689; 39 Cal. Reptr. 377; in 39 Cal. Reptr. 377, on page 378 it is cited,

> "In a letter dated October 31, 1961, plaintiff requested further reconsideration of the commissioner's decision."

This case is contrary to Petitioner's case where Petitioner has made no request for reconsideration acted upon by Respondent. The Ginns v Savage case does not support the Appellate Court's decision by way of its Opinion.

6:6 REASON 6

TRIAL JUDGE'S OPINION
SERVICE BY MAIL IS NOT SUFFICIENT SERVICE

On February 14, 1972 (Appendix G) Petitioner received a letter from State Board Secretary, stating

> "Delivery of a copy of the adopted decision was made on December 27, 1971 to Community Legal Assistance Center, 1709 West Eighth St., Los Angeles, California. Delivery was made by Certified mail #23505 and was receipted on December 27, 1971."

Petitioner relates that by its own admission Respondent did not comply with the Trial Judge's opinion that "SERVICE BY MAIL IS NOT SUFFICIENT SERVICE." (Appendix F) Petitioner relates that by its own admission Respondent never did serve a copy of the Proposed Decision on Petitioner and on his attorney, and Respondent never did deliver by registered or certified mail a copy of the final decision to Petitioner in compliance with Government Code Section 11517b and

and 11518. Petitioner relates that Respondent failed to perfect an effective decision in compliance with Governement Code Section 11519a. Petitioner relates that Government Code Section 11521 on reconsideration and Government Code Section 11523 on judicial review have as a preliminary duty the compliance with Sections 11517b, 11518, and 11519a in service and delivery and perfecting an effective decision.

6:6 REASON 7
ANALYSIS OF THE APPELLATE COURT'S OPINION PROPOSED DECISION - FINDING OF FACT VI THE SUBSTANTIAL EVIDENCE AT ISSUE

This analysis demonstrates that the California Appellate Court's Opinion contains substantial and defective errors in theory and practice. (Appendix A-4, page 5, lines 4-19 and page 6)

POINT: Contention - Ultimate
PETITIONER: Admission (Appendix D)
JUDGE ROTH: Improper computation of experience (Appendix A-4, page 5, lines 11-14)

POINT: Law
PETITIONER: Code of Civil Procedure Section 462
JUDGE ROTH: Accountancy Act Section 5083

POINT: Rule
PETITIONER: Substantial Evidence Rule
JUDGE ROTH: Independent Judgment Rule

POINT: Procedure
PETITIONER: Upon the law
JUDGE ROTH: Upon the facts

POINT: Falsification and Admission
PETITIONER: Alleged by Petitioner
Admitted by Respondent
JUDGE ROTH: Omitted from his Opinion

POINT: Transcript
PETITIONER: Transcript is not necessary because the only issue outstanding is admitted by Respondent
JUDGE ROTH: Transcript necessary regardless of Respondent's admission to the only issue outstanding.

POINT: Reason
PETITIONER: Respondent admits falsifications in the substantial evidence. The evidence does not support the Findings of Fact and Decisions.
JUDGE ROTH: Regardless whether it is true or false, evidence is necessary to the experience requirement to determine satisfaction of the Accountancy Act.

POINT: Judgment - Ultimate Resolution
PETITIONER: Findings of Fact and Decisions are admitted by Respondent to be false; they do not have relevance to the proceedings as provided by Code and case law on admission
JUDGE ROTH: Petitioner is judged by a fraudulent Findings of Fact and Decisions. The ultimate resolution is that the Statement of Issues, Findings of Fact, and Decisions are admitted to be sham. The Administrative Procedure Act and the Code of Civil Procedure are sham. Judgment is solely upon judicial discretion.

6:8 REASON 8
OMISSION OF AN IMPORTANT QUESTION OF LAW
PROPOSED DECISION, FINDING OF FACT VI
ADMISSION-CODE OF CIVIL PROCEDURE SECTION 462

The Opinion of the Appellate Court omitted the important question of law of admission that there are discrepancies in the substantial evidience and that the substantial evidence does not support the findings of fact or the decisions. Petitioner appeared before the Appellate Court on 14 March 1974, and pointed out this important question of law of admission to the court. Petitioner cites his petition ADMISSION THAT CONTRADICTIONS EXIST IN THE SCHEDULE OF EXPERIENCE: and Petitioner relates as follows:

6:8.1 THE SCHEDULE OF WORK EXPERIENCE

Respondent in his Statement of Issues (Appendix C) and as found in identical form in the Hearing Officer's Proposed Decision, Finding of Fact VI (Appendix B-2) both on page 2, makes the following statement regarding qualifying experience allowed Petitioner (not actual experience):

1.	Haskins & Sells	5.0 months
2.	Frank L. Bryant & Co.	1.0 month
3.	Bernard Kotkin & Co.	2.5 months
4.	Memory, Good & Co.	4.5 months
	Total	13.0 months

It is noted that items 1, 2, and 3 adds to 8.5 months and accrued prior to 13 December 1965; and item 4 accrued during the period from that date to 17 October 1966.

6:8.2 ANALYSIS OF RESPONDENT'S DECISIONS

Petitioner in his original Petition for Writ of Mandamus analyzes the State Board's Decisions of 13 December 1965 (Appendix E-1) and 17 October 1966 (Appendix E-2) as it relates to the schedule of qualifying experience, as follows:

ANALYSIS OF RESPONDENT'S DECISIONS

Decision Date	Allowed as Qualifying Experience	Prescription of Additional Experience	Accountancy Act Sec. 5083 & 5084 Experience.
13 Dec 65	10.5 months	+13.5 months	=24.0 months
17 Oct 66	13.0 months	+11.0 months	=24.0 months
DISCREPANCY	2.5 months	2.5 months	

Respondent stated in his Statement of Issues (Appendix C, page 2) and as found in his Proposed Decision, (Appendix B-2, page 2, Finding of Fact VI) that from 13 December 1965 to 17 October 1966 the experience allowed as qualifying is 4.5 months (Memory, Good & Co.) whereas in fact it is 2.5 months; there appears a contadiction of 2 months in Respondent's statement. Respondent stated that prior to 13 December 1965 the experience allowed as qualifying totaled 8.5 months (Haskins & Sells 5 months, Frank L. Bryant & Co. 1 month, and Bernard Kotkins & Co. 2.5 months), whereas in fact it is 10.5 months by Respondent's decision of 13 December 1965; there appears another contradiction of 2 months in Respondent's statement.

6:8.3 ADMISSION OF DISCREPANCIES

Respondent in his Return By Way of Answer to Petitioner's original Petition for Writ of Mandamus (Appendix D, answer 4, lines 11-12) makes the admission of the contradictions in the schedule of qualifying experience, as follows:

"4. Answering paragraph III-A of the petition, Respondent admits to the allegations contained therein."

6:8.4 POINTS and AUTHORITIES

Petitioner relates the following Points and Authorities by a California authority in civil proceedings: Petitioner relates that admission

"is a waiver of proof of fact by conceding its truth" and

"when allegations in a petition are admitted by the answer then
(a) no evidence need be offered in their support;
(b) evidence is not admissible to prove their untruths;
(c) no finding thereon is necessary;
(d) a finding contrary thereto is error."

2 Witkins, California Procedure, page 1194, 1509 (1954).

"Every material allegation of the complaint, not controverted by the answer, must, for the purposes of the action be taken as true; the statement of any new matter in the answer, in avoidance or constituting a defense or counter claim, must, on the trial be deemed controverted by the opposite party."

Code of Civil Procedure Section 462.

6:8.5 THE SUBSTANTIAL EVIDENCE DOES NOT SUPPORT THE FINDINGS AND DECISIONS

In applying the substantial evidence rule in this case, there is no substantial evidence in the record to support the findings. In the Proposed Decision, Fact VI (Appendix B-2, page 2), there is exhibited a schedule of qualifying work experience. In Fact VII (Appendix B-2, page 3) there is listed five classes of qualifying experience; In Fact VIII (Appendix B-2, page 3) these five classes are disqualified. Therefore, the Respondent relies solely and exclusively on the schedule in Fact VI and it is admitted to be not substantial evidence (Appendix D). Question of facts in the substantial evidence, is thus, reduced to a question of law.

Code of Civil Procedure Section 1094.5b provides:

"abuse of discretion is established if.... the order or decision is not supported by the findings, or the findings are not supported by the evidence."

Petitioner's affidavit disclosing discrepancies in the substantial evidence and Respondent's admission to discrepancies in the substantial evidence clearly established that the substantial evidence does not support the findings of fact within the meaning of the Code.

Petitioner submits that Findings of Fact VI (Appendix B-2, page 2) in the PROPOSED DECISION does not support the DECISION (Appendix B-1) on grounds of allegations of discrepancies by Petitioner and admission thereof by Respondent as provided by Code of Civil Procedure Section 1094.5b, as set forth under the substantial evidence rule in a question of facts, that is reduced to a question of law.

6:9 REASON 9

TRANSCRIPT AND FINDINGS OF FACT BY COURT ARE NOT NECESSARY GOVERNMENT CODE SECTION 11523 and CODE OF CIVIL PROCEDURE SECTION 462

6:9.1

The California Appellate Court's Opinion contains substantial and defective errors in theory and practice. The Appellate Court in its Opinion states as a conclusion (Appendix A-4, page 5, lines 10-15)

> "At bench, appellant did not ask for a transcript of the proceedings, yet by the very nature of his contention, an improper computation of time, it was necessary for the court to review the evidence at the hearing to determine if there was substantial evidence to support respondent's decision," and on page 6, lines 2-4 "Without the transcript of the proceedings at the administrative hearing, there was nothing for the court to review."

Petitioner relates that the Appellate Court is not addressing itself to the issues of the case for reason that Petitioner does not plead that the Court review the evidence at the Hearing in his Petition For Writ of Mandamus and that Respondent does not request that the Court review the evidence at the Hearing in his Return By Way of Answer.

Petitioner and Respondent have reduced the question of the evidence at the Hearing to a question of law - admission that the findings of fact does not support the decision because of discrepancies in the substantial evidence. The Appellate Court has no request or reason to make a review of the evidence at the Hearing.

To make a review of the evidence at the Hearing is error on part of the Court because of admission.

There is no conflict between the parties regarding the substantial evidence. It is agreed among the parties that the substantial evidence does not support the findings of fact and decisions. For the Appellate Court to conclude that

> "it was necessary for the Court to review the evidence at the hearing"

is to litigate the case for Respondent contrary to Code of Civil Procedure Section 462 and 1094.5.

The question of fact has been reduced to a question of law by Petitioner's allegation that there are discrepancies in the substantial evidence relied upon to support the findings of fact and decisions and Respondent's admission thereof, and there is no necessity for a transcript; and upon the authority of Warren H. Deering, California Administrative Mandamus, Supplement, January 1974, page 84, Section 13.21 that

> "when only a question of law is involved, the transcript may not be necessary, e.g. jurisdictional questions not involving issue of fact."

6:9.2 ANALYSIS OF THE HEARING OFFICER'S PROPOSED DECISION

Fact I	not at issue
Fact II	not at issue
Fact III	not at issue
Fact IV	not at issue
Fact V	not at issue
Fact VI	at issue - admission - uncontroverted
Fact VII	not at issue
Fact VIII	not at issue - except Finding VI above

Fact IX not at issue
(Facts above are in Appendix B-2)

An analysis of the Hearing Officer's Proposed Decision (Appendix B-2) reveals that only one findings of fact is at issue- Fact VI -the schedule of qualifying experience. Petitioner relates it at issue in his Petition For Writ of Mandamus in allegation III-A. Respondent in his Return By Way of Answer (Appendix D) answers allegation III-A as follows:

"Respondent admits the allegations contained therein."

When question of fact has been reduced to question of law by admission findings of fact by the court are not necessary and would be in error.

6:9.3 APPELLATE COURT'S TRANSCRIPT ISSUE IS ABUSE OF JUDICIAL DISCRETION

Court, Respondent, nor Petitioner have not requested a copy of the transcript. Code of Civil Procedure Section 1094.5 and Government Code Section 11523 do not require the request of the transcript. Code Section 1094.5 provides that the Court may in its discretion order the transcript. If the Court wants a transcript then it should order a transcript as provided by Code Section 1094.5; however, the Court has no grounds for a transcript, because there is only one fact at issue in the Proposed Decision and it is admitted to be false by the Respondent. It is abuse of judicial discretion for the Court to deny the Writ of Mandamus on the ground of transcript.

6:9.4 POINTS AND AUTHORITIES ON TRANSCRIPT AND FINDING OF FACTS

FINDINGS NOT NECESSARY

"If facts alleged in the complaint are not controverted by the answer, they are not in issue, and no evidence need be offered to prove their existence." Fuentes et ux Tucker (1947), 187 P2d 752, 754.

"Futhermore no finding is necessary as to any allegation admitted by the pleadings and a finding contrary thereto cannot stand." Johnston v Security Ins. Co. of Hartford (1970), 86 Cal. Reptr. 133, 136.

"In the case here at bar the pleadings, without conflict, establish all of the necessary facts...No evidence was offered or presented. The hearing is thus reduced to a decision on questions of law. No findings were necessary." Baroldi v Denni (1961), 17 Cal. Reptr. 647, 650-1; Allstate Insurance Co. v Orlando, (1968), 69 Cal. Reptr. 702, 709.

"No error in denial of findings of fact and conclusion of law. In the instant case no evidence was proffered to the trial court; the issue before the trial court was one of law -whether the findings....supported the decision. Consequently, no findings were necessary." Alford v Pierno (1972), 27 CA3d 682; 104 Cal. Reptr. 110, 117-118.

TRANSCRIPT NOT NECESSARY

"When only a question of law is involved, the transcript may not be necessary, e. g., jurisdictional questions not involving issues of fact... See Alford v Pierno

(1972) 27 CA3d 682, 693; 104 Cal. Reptr. 110, 117. Warren H. Deering, California Administrative Mandamus, Supplement, January 1974, page 84, Section 13.21.

7: THE CONCLUSION AND PRAYER PRESENTED TO THE COURT BELOW

FOR ALL OF THESE REASONS, Petitioner request that a Hearing be granted, and Petitioner prays that his relief sought be granted in the following manner:

1. The Writ of Mandamus be issued that reverses the judgment of the Superior Court, entered in Book 6781, Page 291;

2. Ordering and supervising the Superior Court to issue the peremptory writ of mandamus, as provided by Code of Civil Procedure Section 1094.5;

a. Commanding Respondent, State Board of Accountancy, to set aside its decision;

b. Remanding proceedings to Respondent;

c. Ordering Respondent to reconsider the case in the light of the new, relevant evidence, and in the light of the whole record, and the Court's opinion and judgment;

d. Ordering Respondent to take such further action as is specially enjoined upon it by law, in particular, in compliance with Accountancy Act Section 5083, that prescribes as mandatory, as due process of law, that the Certified Public Accountant Certificate shall issue and the burden of proof rests upon the Board of Accountancy to prove beyond refute that it is otherwise.

3. The allowance of costs in this action to Petitioner.

4. The granting of other relief by this Court as considered proper.

8: THE CONCLUSION AND PRAYER PRESENTED TO THE SUPREME COURT

FOR ALL OF THESE REASONS, Petitioner prays that the Supreme Court will grant Petitioner his application for an order directed to the Honorables Orell W. Trask and Joseph T. Sneed, U.S. Ninth Circuit Court of Appeals, in instruction to provide Petitioner with procedural due process of law as set forth in Title 28, U.S. Code, Federal Rules of Appellate Procedure, Title V. Extraordinary Writs, Rule 21, paragraph (b) by ordering an answer to the Petition For Writ of Mandamus, Docket No. 74 - 3342, be filed by Respondents and by setting date for oral arguments.

October ~~November~~ 29th 1975

Respectfully submitted,

Herman J. Grayson

.....

Herman J. Grayson, Petitioner

UNITED STATES MARSHAL'S OFFICE
TEMPLE and SPRINGS STREETS
LOS ANGELES, CALIFORNIA 90012

Dear Marshal:

Enclosed please find five copies of the combined (1) MOTION FOR LEAVE TO FILE PETITION FOR WRIT OF MANDAMUS, (2) MOTION TO TAX AS COST THE PRINTING OF THE APPENDIX, (3) AN APPLICATION FOR AN ORDER TO PROVIDE PETITIONER WITH PROCEDURAL DUE PROCESS OF LAW AS SET FORTH IN APPELLATE RULE 21 BY WAY OF PETITION FOR WRIT OF MANDAMUS, and (4) APPENDIX, that I request to be served. Completed service will include issuance of your certificate of personal service. Please make service of one copy each on the following:

Honorable Robert A. Wenke, Judge
Los Angeles County Superior Court
608 County Courthouse, Dept. #65
Los Angeles, California 90012

Honorable Lester W. Roth, Judge
California Second Appellate Dist. Court, Div. 2
3580 Wilshire Blvd., Room #300
Los Angeles, California 90005

Deputy Attorney General Ronald M. Weiskopf
California Attorney General
3580 Wilshire Blvd.
Los Angeles, California 90005

Honorables Orell W. Trask and Joseph T. Sneed
United States Court of Appeals - 9th Circuit
In Care of the Clerk of the Court of Appeals
United States Courthouse, Los Angeles, Cal. 90012

Enclosed is a U.S. Money Order in $20.00 for estimated fees in service and mileage.

~~November~~ October 29th 1975

Cordially yours,

Herman J. Grayson

P.O. Box, Dallas, Texas 75221
1-214-233-0997

PROOF OF SERVICE BY MAIL

STATE OF TEXAS)
COUNTY OF DALLAS) ss.

I am a citizen of the United States and a resident of the county aforesaid; I am over the age of eighteen years and I am a party to the within entitled action; my address is P.O. Box 961, Dallas, Texas.

On ~~November~~ October 29th 1975, I served the within

(1) MOTION FOR LEAVE TO FILE PETITION FOR WRIT OF MANDAMUS, (2) MOTION TO TAX AS COST THE PRINTING OF THE APPENDIX, (3) AN APPLICATION FOR AN ORDER TO PROVIDE PETITIONER WITH PROCEDURAL DUE PROCESS OF LAW AS SET FORTH IN APELLATE RULE 21 BY WAY OF PETITION FOR WRIT OF MANDAMUS, and (4) APPENDIX

on Judges Robert A. Wenke, Lester W. Roth, Orell W. Trask and Joseph T. Sneed and on Deputy Attorney General Ronald M. Weiskopf

in said action, by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States mail via

Certified Mail Receipt No 569976 at Dallas, Texas addressed as follows:

UNITED STATES MARSHAL'S OFFICE
UNITED STATES COURTHOUSE
TEMPLE and SPRING STREETS
LOS ANGELES, CALIFORNIA 90012

I declare under penalty of perjury that the foregoing is true and correct.

Executed on ~~November~~ October 29th 1975, at Dallas, Texas

Herman J. Grayson

Herman J. Grayson.

VERIFICATION

STATE OF TEXAS))
COUNTY OF DALLAS)) ss.

I am the Petitioner, Herman J. Grayson, in the above entitled action;
I have read the foregoing

(1) MOTION FOR LEAVE TO FILE PETITION FOR WRIT OF MANDAMUS, (2) MOTION TO TAX AS COST THE PRINTING OF THE APPENDIX, (3) AN APPLICATION FOR AN ORDER TO PROVIDE PETITIONER WITH PROCEDURAL DUE PROCESS OF LAW AS SET FORTH IN APELLATE RULE 21 BY WAY OF PETITION FOR WRIT OF MANDAMUS, and (4) APPENDIX

and I know the contents thereof; and I certify that the same is true of my own knowledge, except as to those matters which are therein stated upon my information or belief, and as to those matters I believe it to be true.

I declare under penalty of perjury, that the foregoing is true and correct.

Excuted on October 21st 1975 at Dallas, Texas.

Herman J. Grayson
Herman J. Grayson

THE STATE OF TEXAS I

COUNTY OF DALLAS I

Before me, the undersigned authority, in and for said County and State, on this day personally appeared Herman J. Grayson known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and considerations therein expressed, and in the capacity therein stated.

Given under my hand and seal of office, this 21 day of OCT., A.D., 1975.

Horatio Smith
NOTARY PUBLIC IN AND FOR DALLAS COUNTY, TEXAS

(SEAL)

Certificate—Notary—Form 600

THE STATE OF TEXAS.
County of Dallas.

I, Tom E. Ellis, County Clerk of the County Court of Dallas County, State of Texas, same being a Court of record, having a seal, do hereby certify That Horatio Smith is and was on the 21st day of October A. D. 19 75, a Notary Public in and for Dallas County, State of Texas, residing in said County, duly commissioned and sworn and authorized to administer oaths, take acknowledgments and proof of deeds and other instruments, in accordance with the laws of the State of Texas; that ~~her~~ his term of office commenced on the 1st day of June 19 75, and will expire on the 1st day of June 19 77, and that I am acquainted with ~~her~~ his handwriting and verily believe that ~~her~~ his signature written above is genuine, to certify which witness my hand and seal of office this the 21st day of October A. D. 19 75

Tom E. Ellis

~~By~~ _____ ~~Deputy~~.

Clerk County Court, Dallas County, Texas.

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UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

AUG 6 1975

EMIL E. MELFI, JR. CLERK
U. S. COURT OF APPEALS

HERMAN J. GRAYSON,

Petitioner

vs.

LOS ANGELES COUNTY SUPERIOR COURT and
CALIFORNIA SECOND APPELLATE DISTRICT COURT,

Respondents

CALIFORNIA STATE BOARD OF ACCOUNTANCY,
Real Party of Interest

No. 74-3342

ORDER

Before: TRASK and SNEED, Circuit Judges

Upon due consideration, the "Motion to Reverse the Order of 8 July 1975 that denies the Petition for Writ of Mandamus and Motion to Provide Procedural Due Process of Law as set forth in Appellate Rule 21" is denied.

Orell W. Trask

Jerry J. Sneed
U.S. Circuit Judges

A TRUE COPY
ATTEST SEP 2 1975
EMIL E. MELFI, JR.,
Clerk
by Susan A. White
Deputy

Appendix A-1.1

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

JUL 8 1975

EMIL E. MELEI, JR. CLERK
U. S. COURT OF APPEALS

HERMAN J. GRAYSON,

Petitioner

vs.

LOS ANGELES COUNTY SUPERIOR COURT and
CALIFORNIA SECOND APPELLATE DISTRICT COURT,

Respondents

CALIFORNIA STATE BOARD OF ACCOUNTANCY,

Real Party of Interest

No. 74-3342

O R D E R

Docketed

JUL 10 1975

Before: TRASK and SNEED, Circuit Judges

Upon due consideration, the petition for writ of mandate is denied.

A TRUE COPY
ATTEST:
, Deputy

Orell W. Trask

Jerry J. Sneed
U.S. Circuit Judges

Mo Cal 6/30/75

Appendix A-1.2

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

HERMAN J. GRAYSON, Petitioner PLAINTIFF(S) vs CALIFORNIA STATE BOARD OF ACCOUNTANCY, Respondent DEFENDANT(S)	CASE NUMBER 37262 NOTICE OF ENTRY OF JUDGMENT

To the above named parties and to their attorneys of record:

You are hereby notified that judgment in the above entitled matter was entered on Nov 17, 1972, Book 6781, Page 291

WILLIAM G. SHARP, County Clerk and Clerk of the Superior Court of the State of California for the County of Los Angeles.

By _____ Deputy.

L. Weber

CERTIFICATE OF MAILING

I, WILLIAM G. SHARP, County Clerk and Clerk of the Superior Court of the State of California for the County of Los Angeles, and not a party to the within action, hereby certify; that on Nov 21, *, 1972 I served notice of entry of judgment on the parties in the within action, by depositing true copies thereof, inclosed in sealed envelopes with postage thereon fully prepaid in the United States Post Office mail box at Los Angeles, California addressed as follows:*

HERMAN J. GRAYSON
P.O. BOX 901
Dallas, Texas 75221

STATE OF CALIFORNIA
DEPARTMENT OF JUSTICE
600 State Bldg.
Los Angeles, CA. 90012
Attn: M. Weiskopf

Dated Nov 21, 1972

WILLIAM G. SHARP, County Clerk and Clerk of the Superior Court of the State of California for the County of Los Angeles.

By L. Weber Deputy.

Los Angeles, Cal. [illegible] 1972, 19

TITLE { GRAYSON / Calif. State Bd. of Accnt. } No. 42309

Ordered on calendar [illegible] 14 1972 at 9:30 a.m. before Div. 3.

If no oral argument is desired, and a stipulation to that effect is filed, no court appearance will be necessary.

Each party must file at once with the superior court clerk a further notice specifying such of the designated original exhibits and affidavits as he deems necessary to have transmitted to this court. (Rule 10b)

Lester M. Roth, Presiding Judge
Ricklin F. Fleming, Associate Justice
Lynn D. Compton, Associate Justice
Edwin F. Brach, Associate Justice

CLAY ROBBINS JR., Clerk

Deputy Clerk

CLERK'S OFFICE SUPREME COURT
4250 STATE BUILDING
SAN FRANCISCO, CALIFORNIA 94102

NOV 16 1972

I have this day filed Order

HEARING DENIED

In re: 2 Civ. No. 42309
Grayson
vs.
Calif. State Bd. of Accountancy

Respectfully,

G. E. BISHEL
Clerk

Los Angeles, Cal. [illegible], 19 JUNE 25, 1974

TITLE { Grayson / Cal. State Board of Accountancy } No. 42309

THE COURT: Motion to recall remittitur denied.

CLAY ROBBINS, Clerk

NOT FOR PUBLICATION.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

HERMAN J. GRAYSON,

Petitioner and Appellant,

vs.

CALIFORNIA STATE BOARD OF ACCOUNTANCY,

Respondent and Respondent.

No. 2d Civ. 42309
(S.Ct. No. C 37262)

COURT OF APPEAL-SECOND DIST.
FILED
MAR 21 1974
CLAY ROBBINS, JR. Clerk
Deputy Clerk

APPEAL from judgment of the Superior Court of Los Angeles County. Robert A. Wenke, Judge. Affirmed.

For Appellant: In Propria Persona.

For Respondent: Evelle J. Younger, Attorney General, and Ronald M. Weiskopf, Deputy Attorney General.

Los Angeles, Cal. MAR 18 1974, 19__

TITLE { Grayson / Calif. State Bd. of Accountancy, Va. 42309 }

THE COURT:

PETITION FOR REHEARING DENIED.

page 1.

Appellant, Herman J. Grayson, appeals from a judgment denying his petition for a writ of mandate, and thereafter a motion for a new trial.

Respondent, California State Board of Accountancy, notified appellant by letters dated December 13, 1965 and October 17, 1966, that his application for the issuance of a Certified Public Accountant's Certificate had not been approved because of a lack of satisfactory experience.[1.]

On July 26, 1971, a Statement of Issues was filed setting forth the reasons for the denial and requesting that a formal hearing be held in order to give appellant an opportunity to be heard. Appellant filed a Notice of Defense to the Statement of Issues and gave the Community Legal Assistance Center as his mailing address. A hearing pursuant to the Administrative Hearing Act was held and the hearing officer issued a Proposed Decision denying appellant's application. The Proposed Decision was

1. Business and Professions Code, §5083 requires proof of work in public accounting prior to a certificate being issued.

2.

adopted by respondent as its decision. The Decision and Proposed Decision were mailed to appellant at the Community Legal Assistance Center. Appellant requested reconsideration and by letter of February 22, 1972, appellant was notified that his request for reconsideration had been denied.

On August 31, 1972, appellant filed a petition for writ of mandate. [Note only Clerk's Transcript pp. 1-22 is actual complaint]. The essence of the requested relief was that the court declare that he had sufficient prior work experience in the field of accounting and mandate respondent to set aside its decision and proceed with a new hearing. However, appellant did not file a transcript of the two days of administrative hearing that was held on the Statement of Issues. The petition was denied on October 16, 1972; appellant was notified the next day, and judgment was entered. After the decision was announced, appellant filed motions for: new trial; request for leave to file the complete transcript of the administrative record; and restoration of the alternative writ to calendar. -All were denied.

Appellant's first contention is that the trial court

improperly denied the petition for writ of mandate. Government Code, section 11523 provides for judicial review of administrative decisions by way of petition for writ of mandate. That section requires the petition to be filed in the superior court within 30 days from the time that the administrative agency could last have ordered a reconsideration of its decision. Appellant concedes that the petition was not timely filed in the superior court, but he argues that since (1) he did not receive a copy of the proposed decision prior to its submission to the board, and (2) the letter he ultimately did receive was sent by certified rather than registered mail, the action of the board did not comply with due process. Therefore, the time limitations never ran since there was no legal decision for respondent to reconsider.

However, it is well settled that neither due process nor the Administrative Procedure Act compels that the hearing officer's proposed decisions be served upon the parties if the agency adopts the proposed decision. (Government Code, §11517(b); Dami v. Dept. Alcoholic Bev. Control, 176 Cal. App.2d 144, 147-48 (1959); Leeds v. Gray, 109 Cal.App.2d 874, 884 (1952).) The fact that the ultimate decision was mailed by certified mail rather than registered mail is

immaterial since Government Code section 8311 provides that certified mail satisfies the mailing requirements of Government Code section 11578. 5/B 11518.

Although the time requirements of Government Code section 11523 are akin to statutes of limitations and not jurisdictional (Ginns v. Savage, 61 Cal.2d 520 (1964)) 39 Cal Rptr 377 393 P 689 the aggrieved party must prosecute his action with reasonable diligence, and he may not indefinitely suspend the running of the statutes of limitation - 30 days - by delaying his request for a writ of mandate. At bench, appellant did not ask for a transcript of the proceedings, yet by the very nature of his contention, an improper computation of time, it was necessary for the court to review the evidence at the hearing to determine if there was substantial evidence to support respondent's decision. Since appellant failed to prosecute his action with reasonable diligence there was no abuse of discretion by the trial court in dismissing the petition. (Wisler v. Cal.State Board of Accountancy, 136 Cal.App.2d 79, 84-85 (1955).)

Appellant next contends that the trial court erred in denying his motion for new trial. The uncontradicted record shows appellant merely reiterated the points he had urged upon the original petition for writ of mandate.

The motion was subject to the same infirmity that had attended the original petition. Without the transcript of the proceedings at the administrative hearing, there was nothing for the court to review. An offer to file the transcript after respondent had filed its return and raised the statute of limitations, as a defense and after judgment had been entered, was too late. Appellant had the burden to show error (Beamon v. Dept. of Motor Vehicles, 180 Cal.App.2d 200 (1960)). We cannot say that the court abused its discretion in denying the motion for new trial when the same points subject to the same objections were being raised again by the same party. (People ex rel. Dept. Pub. Wks. v. Hunt, 2 Cal.App.3d 158 (1969).) 82 Cal Rptr 546

The judgment is affirmed.

NOT FOR PUBLICATION.

ROTH, P.J.

We concur:

COMPTON, J.

BEACH, J.

BEFORE THE STATE BOARD OF ACCOUNTANCY

DEPARTMENT OF CONSUMER AFFAIRS

STATE OF CALIFORNIA

In the Matter of the Statement of Issues Against:	NO. SI 5
HERMAN JACOB GRAYSON,	OLA 27035
Respondent.	

DECISION

The attached Proposed Decision of the Hearing Officer is hereby adopted by the Board of Accountancy as its decision in the above-entitled matter.

This decision shall become effective on the 21st day of January, 1972.

IT IS SO ORDERED this 22nd day of December, 1971.

BOARD OF ACCOUNTANCY

BY: _____
President

Appendix B-1

DEPARTMENT OF CONSUMER AFFAIRS

STATE OF CALIFORNIA

In the Matter of the Statement of Issues Against:	NO. SI 5
HERMAN JACOB GRAYSON,	OLA 27035
Respondent.	

PROPOSED DECISION

This matter came on regularly for hearing before Jerome Schwimmer, Hearing Officer of the Office of Administrative Procedure, at Los Angeles, California, and was heard on October 15 and 18, 1971. Laurence P. Scherb II, Deputy Attorney General, appeared on behalf of the Board of Accountancy. Respondent appeared in person and was represented by Roblin J. Williamson, Attorney at Law. It was stipulated by counsel for respondent that, as to the Defense and Answer to Statement of Complaint" filed herein by respondent, any and all issues raised therein for decision prior to hearing are waived and withdrawn and that it be deemed that there are no issues raised thereby as to the sufficiency of the pleadings or any other issues requiring decision prior to hearing. Oral and documentary evidence was introduced on behalf of the parties, the matter was submitted, and the Hearing Officer finds the following facts:

I

Harvey Shadle is the Executive Secretary of the Board of Accountancy and made the Statement of Issues in his official capacity as such.

page 1

page 1

Appendix B-2, page 1

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II

On or about August 25, 1965, respondent executed and filed with the Board, an application for issuance to him of a certified public accountant certificate.

III

Thereafter the Board denied said application, and respondent has requested a hearing thereon.

IV

Pursuant to stipulation, it is found true that on or before August 30, 1966, respondent Herman Jacob Grayson had successfully passed all phases of examinations given by the Board for issuance of a certificate in certified public accountancy, including theory of accounts, accounting practice, auditing, commercial law and a written examination relating to the rules of professional conduct.

V

Pursuant to stipulation, it is found true that respondent is a college graduate who meets the requirements for and is eligible for and entitled to one year's credit toward fulfillment of the public accounting experience requirements, pursuant to the provisions of Section 5084 of the Business and Professions Code.

VI

Respondent is entitled to and was given by the Board credit for thirteen (13) months of experience in the employ of certified public accountants, as follows:

1.	Haskins & Sells	5 months
2.	Frank L. Bryant & Company .	1 month
3.	Bernard Kotkin & Company. .	2½ months
4.	Memory, Good & Company. . .	4½ months
	Total	13 months

VII

Respondent claims credit for qualifying experience and the Board has denied any and all credit for the following activities of respondent:

1. Work as an internal auditor with the Department of Water and Power of the City of Los Angeles.

2. Work with H & R Block Company, involving the preparation of tax returns.

3. Respondent's "general accounting experience".

4. Work respondent performed as a "self-employed tax specialist" in the years 1963, 1964, 1965 and 1966.

5. Respondent's time in taking the CPA coaching courses.

VIII

It was not established by respondent that any of the items set forth in Finding VII above, or any other activity or activities of respondent, except as set forth in Findings V and VI above, constituted qualifying public accounting experience, or its equivalent, within the meaning of Section 5083 of the Business and Professions Code, or any of its subdivisions, together with Rule 11.5, Chapter 1, Title 16 of the California Administrative Code.

IX

It is true that respondent, in his said application did not list his experience between the following dates:

September 1956 to July 1958
May 31, 1959 to October 5, 1959
March 7, 1960 to October 24, 1960
December 5, 1960 to April 7, 1961
February 15, 1962 to February 21, 1963
April 16, 1963 to July 23, 1963

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October 15, 1963 to January 5, 1964

April 16, 1964 to June 3, 1964.

Respondent's failure so to do was based upon his bona fide belief that the listing of only accounting experience was required on said application form.

* * * * *

Pursuant to the foregoing findings of fact, the Hearing Officer makes the following determination of issues:

I

To the extent that the same were not heretofore waived or withdrawn or otherwise ruled upon, each and all of the motions, objections and special defenses raised by respondent's "Defense and Answer to Statement of Complaint," on file herein, have been considered and are respectively hereby denied, overruled and found untrue.

II

Respondent has not furnished evidence of public accounting experience, or its equivalent, of the length and character as required by Section 5083, Business and Professions Code of California, and Rule 11.5, Chapter 1, Title 16, California Administrative Code, and is therefore not eligible to receive a certificate as a certified public accountant.

* * * * *

WHEREFORE, THE FOLLOWING ORDER is hereby made:

The application of Herman Jacob Grayson for issuance of a certified public accountant certificate is hereby denied, at this time, without prejudice.

I hereby submit the foregoing which constitutes my Proposed Decision in the above-entitled matter, as a result of a hearing held before me on October 15 and 18, 1971, at Los Angeles.

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and recommend its adoption as the decision of the Board of Accountancy.

DATED: November 29, 1971

JEROME SCHWIMMER, Hearing Officer

EVELLE J. YOUNGER, Attorney General
LAWRENCE P. SCHERB II,
Deputy Attorney General
600 State Building
217 West First Street
Los Angeles, California 90012
Telephone: 620-5857

Attorneys for Complainant

BEFORE THE BOARD OF ACCOUNTANCY

DEPARTMENT OF CONSUMER AFFAIRS

STATE OF CALIFORNIA

In the Matter of the Statement of Issues Against:

HERMAN JACOB GRAYSON
238-C South Mission Drive
San Gabriel, California 91176,

Respondent.

NO. SI

STATEMENT OF ISSUES

Office of Administrative Procedure
11 ADM-LA 71-714

Complainant, HARVEY SHADLE, alleges that:

1. He is the Executive Secretary of the State Board of Accountancy of the State of California (hereinafter referred to as the "Board") and makes this statement of issues solely in his official capacity as such and not otherwise.

2. By August 30, 1966, respondent Herman Jacob Grayson (hereinafter referred to as respondent) had successfully passed all phases of examinations given by the Board for issuance of a certificate in certified public accountancy, including theory of accounts, accounting practice, auditing commercial law and a written examination relating to the rules of professional conduct, California Administrative Code, Title 16, Chapter 1, Article 9.

3. Respondent's pending application for a certified public accountant's certificate was not approved by the Board's

Qualifications Committee for Certified Public Accountants for the following reasons:

A. Respondent lacks sufficient experience as an employee of a certified public accountant or public accountant. Respondent was given credit for the following experience with certified public accountants:

1. Haskins & Sells	5	months
2. Frank L. Bryant & Company .	1	month
3. Bernard Kotkin & Company. .	2½	months
4. Memory, Good & Company. . .	4½	months
Total	13	months

Respondent therefore needs 11 additional months in public accounting to make the 24 months contemplated by section 5083(a)[1] of the Accountancy Act.[2]

B. Respondent has not received any credit for his work as an internal auditor with the Department of Water and Power of the City of Los Angeles, since this experience covered cash audits, and section 5083(d) and section 5084 require a variety of experience. In the Board's opinion, cash audits do not meet the variety of experience contemplated by these sections and required by Rule 11.5.

1. All statutory references herein are to the Business and Professions Code unless otherwise indicated.

2. Such additional 11 months' experience in public accountanc in the Board's opinion, should be such as to meet all of the requirements of Title 16, California Administrative Code, Chapter 1, Rule 11.5, since the most recent employment, being that of Memory, Good & Company, gives credit for only subparagraphs 1, 2 and 4 of the Rule 11.5; further said periods of employment with Frank L. Bryant & Company and Bernard Kotkin & Company are so short that, standing alone, the Board would request further information as to how respondent obtained satisfactory experience under Rule 11.5 in that short a period of time.

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C. The Board has not given respondent credit for his work with H & R Block Company. This work involved the preparation of tax returns which again lacks the variety of experience required by section 5083 and Rule 11.5. Even if this experience were diversified, it would not qualify as being in the employ of a public accountant under section 5083, since respondent's employer was H & R Block, and Messrs. Dennis and Skousen, although public accountants, were not his employers.

D. There are discrepancies in respondent's claims as to his experience since respondent claims experience working for four CPA employers for a total of 15.1 months, which was accomplished by taking additional credit for overtime, vacations paid and for work done during vacations; the Board calculates experience in terms of months or half months, and the Board does not give extra credit for overtime nor does it deduct paid vacations; the Board relies on forms E that are completed by employers as evidence of experience rather than an applicant's contentions.

E. The Board did not allow credit for respondent's "general accounting experience" since there is no evidence that this was "substantially equivalent to public accounting experience" under section 5083(d).

F. The Board has allowed no credit for the work respondent states he performed as a "self-employed tax specialist" in the years 1963, 1964, 1965 and 1966 in the absence of evidence as to the nature and period covered by this work to substantiate

the fact that it qualifies under section 5083; respondent's own description of said works suggests that it was tax return work lacking the variety of experience necessary.

G. The Board has allowed no credit for respondent's time in taking the CPA coaching courses, since this is mere preparation to take the CPA examination and is not public accounting experience.

H. Respondent's application leaves numerous time gapes, when said application requested that "a complete record of your experience must be included . . . ." Specifically, respondent did not show his experience between the following dates:

September 1956 to July 1958
May 31, 1959 to October 5, 1959
March 7, 1960 to October 24, 1960
December 5, 1960 to April 7, 1961
February 15, 1962 to February 21, 1963
April 16, 1963 to July 23, 1963
October 15, 1963 to January 5, 1964
April 16, 1964 to June 3, 1964

WHEREFORE, complainant requests that the Board hold a hearing on the allegations contained in the within statement of issues and following the hearing issue a decision:

1. Granting or denying respondent's application for a certified public accountant's certificate; and

2. Taking such other and further action as the Board shall deem necessary and proper.

DATED: This 27th day of July, 1971.

HARVEY SHADLE
Executive Secretary
BOARD OF ACCOUNTANCY
STATE OF CALIFORNIA

Stmt
Appt
-714
-71

EVELLE J. YOUNGER, Attorney General
RONALD M. WEISKOPF,
Deputy Attorney General
600 State Building
217 West First Street
Los Angeles, California 90012
Telephone: 620-4602

Attorneys for Respondent

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

HERMAN J. GRAYSON, Petitioner, v. CALIFORNIA STATE BOARD OF ACCOUNTANCY, Respondent.	NO. C 37262 RETURN BY WAY OF ANSWER TO PETITION FOR WRIT OF MANDATE WITH POINTS AND AUTHORITIES

COMES NOW, respondent (erroneously designated "defendant" in the petition), the Board of Accountancy of the State of California, and make this Return by Way of Answer to the Petition for Writ of Mandamus on file herein, admits, denies and affirmatively alleges, as follows:

4. Answering paragraph III-A of the petition, respondent admits the allegations contained therein.

STATE OF CALIFORNIA — EDMUND G. BROWN, Governor

DEPARTMENT OF PROFESSIONAL AND VOCATIONAL STANDARDS
BOARD OF ACCOUNTANCY
1021 O STREET
SACRAMENTO 95814

Board Members
Joseph P. Spilberg, C.P.A.
President
James Logan Smith, C.P.A.
Vice President
Carl Buchow, Jr., C.P.A.
Charles W. Lamdin, C.P.A.
Andrew P. Marincovich, C.P.A.
Henry E. Plaxico
Irving Rosen, P.A.
Wilbur J. Schroner, P.A.

Harry T. Magill, C.P.A.
Secretary-Treasurer
Harvey Shadle
Executive Secretary

December 13, 1965

Mr. Herman Jacob Grayson
238-C S. Mission Drive
San Gabriel, California 91776

Dear Mr. Grayson:

Your application for the issuance of a CPA certificate was reviewed by the CPA Qualifications Committee at a meeting held November 29, 1965.

Your application was not approved for lack of sufficient satisfactory experience. With only ten and one half months in public accounting, your other experience was not considered a suitable substitute.

An additional thirteen and one half months of satisfactory public accounting experience would make you eligible for a certificate, but it is impossible to pre-evaluate other experience.

Very truly yours,

Dale Hunter

DALE HUNTER
Assistant Secretary

DH:nw

STATE OF CALIFORNIA—BUSINESS AND COMMERCE AGENCY — EDMUND G. BROWN, Governor

DEPARTMENT OF PROFESSIONAL AND VOCATIONAL STANDARDS
BOARD OF ACCOUNTANCY
1021 O STREET
SACRAMENTO 95814

Board Members
James Logar Smith, C.P.A.
President
Carl Dachow, Jr., C.P.A.
Vice President
Harry T. Magill, C.P.A.
Andrew P. Marincovich, C.P.A.
Henry E. Plaxico
Irving Rosen, P.A.
Wilbur J. Schraner, P.A.
Joseph F. Spilberg, C.P.A.

Robert E. Whyte, C.P.A.
Secretary-Treasurer
Harvey Shodis
Executive Secretary

October 17, 1966

Mr. Herman Jacob Grayson
238-C S. Mission Drive
San Gabriel, California 91776

Dear Mr. Grayson:

Your application for the issuance of a CPA certificate was reviewed by the CPA Qualifications Committee at a meeting held October 4, 1966.

The Committee is of the opinion that you require an additional eleven months of public accounting experience which must be of the character prescribed by Rule 11.5 of the Board.

Please communicate with this office when you feel you have met this requirement.

Very truly yours,

Dale Hunter

DALE HUNTER
Assistant Secretary

DH:nw

Appendix E-2

ORIGINAL FILED
AUG 24 1972
COUNTY CLERK

Superior Court
Writs and Receivers Department No. 65
Los Angeles County Courthouse
110 No. Grand Avenue, Los Angeles, Cal.

Attention of Court Clerk, Writs and Receivers Department

Dear Clerk:

C 37262

The Court has before it a

1. Petition for Writ of Mandamus and

2. Alternative Writ of Mandamus.

When the Judge has signed the writ and the Clerk has endorsed and inserted appearance date, will you please insert, in the envelopes provided, a copy of the writ to the following parties:

Defendant, California State Board of Accountancy, and

Petitioner, Herman J. Grayson.

Will you please place the envelopes in your outgoing mail, thank you,

Cordially yours,

Herman J. Grayson

Herman J. Grayson.

P.O. Box 961
Dallas, Texas 75221
1-214-233-0997

Sitting in middle of October. When you return copy to Mr. Grayson, show him that service by mail is not sufficient service.

ROBERT A. WEINKE

Appendix F

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STATE OF CALIFORNIA—AGRICULTURE AND SERVICES AGENCY — RONALD REAGAN, Governor

DEPARTMENT OF CONSUMER AFFAIRS
BOARD OF ACCOUNTANCY
1021 O STREET, SACRAMENTO, CALIFORNIA 95814
TELEPHONE: (916) 445-5347

February 14, 1972

Herman J. Grayson
P. O. Box 961
Dallas, Texas 75221

Dear Mr. Grayson:

Mr. Jerome Schwimmer, Hearing Officer, Office of Administrative Procedure, has forwarded to this office your letter to him of February 5, 1972.

Delivery of a copy of the adopted decision (OLA 27035, SI-5) was made on December 27, 1971 to Community Legal Assistance Center, 1709 West Eighth Street, Los Angeles, California 90017. Delivery was made by certified mail (#235305) and was receipted on December 27, 1971.

Your attention is invited to the letter sent you on January 7, 1972 by Mr. Harvey Shadle, then Executive Secretary of the California State Board of Accountancy. In it Mr. Shadle questioned the purpose of the "Notice of Exception" submitted by you. If it was your intention that this notice of exception be treated as a request for reconsideration you are hereby advised that it is denied.

It is suggested that you consult your legal counsel with respect to this matter.

Very truly yours,

DONALD O. OTTEN
Executive Secretary

DOO:iy

cc: Lawrence P. Scherb, II
Jerome Schwimmer
Roblin J. Williamson
Brenton Bradford
Robert Mellin
David Alpert

BRENTON B. BRADFORD, C.P.A.
ANTHONY GUNTERMANN, C.P.A.
ROBERT A. MELLIN, C.P.A.

WILBUR H. STEVENS, C.P.A.
ROY E. PARKER, P.A.

ROY E. REYNOLDS, P.A.
PATRICK J. RILEY, Attorney

Appendix G

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

LOS ANGELES, CALIFORNIA

HERMAN J. GRAYSON, Petitioner,	
vs.	No. 74 - 3342
JUDGE ROBERT A. WENKE,	MOTION TO REVERSE THE ORDER OF
LOS ANGELES COUNTY SUPERIOR COURT,	8 JULY 1975 THAT DENIES THE
Respondent, and	PETITION FOR WRIT OF MANDAMUS
JUDGE LESTER W. ROTH,	and
CALIFORNIA SECOND APPELLATE DISTRICT COURT,	MOTION TO PROVIDE PROCEDURAL
Co-Respondent, and	DUE PROCESS OF LAW AS SET FORTH
CALIFORNIA STATE BOARD OF ACCOUNTANCY,	IN APPELLATE RULE 21.
Real Party of Interest.	

TO THE HONORABLE PRESIDING JUSTICE and JUSTICES ORELL TRASK and JOSEPH SNEED and THE ASSOCIATE JUSTICES, Greetings:

1. Petitioner moves the Court to reverse its Order that denies the Petition For Writ of Mandate. The Order is filed 8 July 1975 as follows:

" Upon due consideration, the petition for writ of mandate is denied."

2. Petitioner moves the Court to provide Petitioner with procedural due process of law as set forth in Federal Rules of Appellate Procedure, Title V, Extraordinary Writs, Rule 21, paragraph (b) by ordering an answer to the petition be filed by the Respondents and by setting the date for oral arguments.

3. The above cited motions are made upon the following grounds:

3.1 MANDATE THEORY

"For mandamus reaches only the question whether the duty as it exists was discharged and not the soundness or the justice of the results." (1937) U.S. Court of Appeals for the District of Columbia. U.S. vs. Interstate Commerce Commission, 88 F2d 780, 783.

3.2 STATEMENT OF ISSUES

"A hearing to determine whether a --- license should be granted... shall be initiated by filing a statement of issues." California Government Code Section 11504.

3.3 THERE IS ONLY ONE ISSUE IN THIS CASE

An analysis of the Hearing Officer's Proposed Decision (Appendix B-2) reveals that only one finding of fact is at issue - Fact VI - the schedule of qualifying experience. Petitioner relates it at issue in his Petition For Writ of Mandamus in allegation III-A (Superior Court). Respondent in his Return By Way of Answer (Appendix D) answers allegation III-A as follows:

"Respondent admits the allegations contained therein."

When question of fact has been reduced to question of law by admission finding of facts by the court are not necessary and would be in error. (This Petition, page 18, lines 1 to 16).

3.4 ABUSE OF DISCRETION

"The inquiry in such a case shall extend to the questions... whether there was any prejudicial abuse of discretion. Abuse of discretion is established if...the order or decision is not supported by the findings, or the findings are not supported by the evidence." California Code of Civil Procedure, Sec. 1094.5

3.5 THE SUBSTANTIAL EVIDENCE DOES NOT SUPPORT THE FINDINGS AND DECISIONS. ABUSE OF DISCRETION IS ESTABLISHED.

In applying the substantial evidence rule in this case, there is no substantial evidence in the record to support the findings. In the Proposed Decision, Fact VI (Appendix B-2, page 2), there is exhibited a schedule of qualifying work experience. In Fact VII (Appendix B-2, page 3) there is listed five classes of qualifying experience: In Fact VIII (Appendix B-2, page 3) these five classes are disqualified. Therefore, The Respondent relies solely and exclusively on the schedule in Fact VI and it is ADMITTED to be not substantial evidence (Appendix D). A question of facts in the substantial evidence, is thus, reduced to a question of law.

Code of Civil Procedure Section 1094.5(c) provides that, where it is claimed that the findings are not supported by the evidence...abuse of discretion is established if the finding of facts is not supported by the substantial evidence. Petitioner's affidavit disclosing discrepancies in the substantial evidence and Respondent's admission to discrepancies in the substantial evidence clearly established that the substantial evidence does not support the finding of facts within the meaning of the Code.

Petitioner submits that Finding of Fact VI (Appendix B-2, page 2) in the PROPOSED DECISION does not support the DECISION (Appendix B-1) on grounds of allegations of discrepancies by Petitioner and admission thereof by Respondent as provided by Code of Civil Procedure Section 1094.5(c), as set forth under the substantial evidence rule in a question of facts, that is reduced to a question of law. (This Petition, page 15, lines 25 to 28, and page 16, lines 1 to 19).

3.6 THE CALIFORNIA COURTS REFUSE TO DISCHARGE ITS MANDATED DUTY AND TO ACT UPON PETITIONER'S COMPLAINT THAT THE SUBSTANTIAL EVIDENCE DOES NOT SUPPORT THE DECISION (ABUSE OF DISCRETION IS ESTABLISHED).

Petitioner relates that the opinion of the California Appellate Court omitted the important question of law of admission that there are discrepancies in the substantial evidence and that the substantial evidence does not support the findings of fact or the decisions.

(This Petition, pages 13 to 16, citing page 13, lines 18 to 26)

Under administrative procedure and mandamus theory, the Court has a mandated duty to review the question whether the substantial evidence supports the findings of fact and the decisions (Fact VI, page 18, line 7).

The question whether the duty as it exists was discharged is clearly set forth. THE COURTS' MANDATED DUTY IS NOT DISCHARGED. When the California Appellate Court made an omission of an important question of law - admission - Code of Civil Procedure, Section 462, the Court refused to discharge its mandated duty and proceeded to deprive Petitioner of due process of law.

3.7 THIS COURT SHOULD PROCEED UNDER APPELLATE RULE 21 AND ORDER THAT AN ANSWER TO THE PETITION BE FILED BY THE RESPONDENTS.

The California Courts' mandated duty to review the outstanding issue as it relates to the findings of fact and decisions has not been discharge. The United States Court of Appeals has a mandated duty to review the outstanding issue as it relates to the findings of fact and decisions. The United States Court of Appeals has a mandated duty to provide due process of law to Petitioner in compliance with the procedure set forth in Appellate Rule 21, that provides

"the court shall order that an answer to the petition

shall be filed by the respondents," and

"the clerk shall advise the parties of the date of oral argument."

3.8 PETITIONER HAS A CONSTITUTIONAL RIGHT TO PROCEDURAL DUE PROCESS OF LAW.

Petitioner has a constitutional right to procedural due process of law as set forth in the due process clause of the XIV Amendment Article, Section 1 that provides

"nor shall any State deprive any person of--- property, without due process of law;"

and the XIII Amendment Article, Section 1 that provides

"...nor involuntary servitude...shall exist..."

and it is the constitutional and mandated duty of the United States Court of Appeals to provide Petitioner with procedural due process of law as set forth in Appellate Rule 21.

WHEREFORE, Petitioner moves the United States Court of Appeals to reverse its Order filed 8 July 1975 and Petitioner moves this Court to provide Petitioner with procedural due process of law by ordering that an answer to the Petition shall be filed by the Respondents and the setting of date for oral argument as provided by Appellate Rule 21.

Respectfully submitted,

Date: July 28, 1975

Herman J. Grayson

Herman J. Grayson, Petitioner.

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

LOS ANGELES, CALIFORNIA

HERMAN J. GRAYSON, Petitioner, vs. JUDGE ROBERT A. WENKE, LOS ANGELES COUNTY SUPERIOR COURT, Respondent, and JUDGE LESTER W. ROTH, CALIFORNIA SECOND APPELLATE DISTRICT COURT, Co-Respondent, and CALIFORNIA STATE BOARD OF ACCOUNTANCY, Real Party of Interest.)	No. 74 - 3342 NOTICE OF APPEAL and NOTICE TO CLERK TO PREPARE A TRANSCRIPT OF RECORD FOR THE SUPREME COURT.

TO THE HONORABLE PRESIDING JUSTICE and JUSTICES ORELL TRASK and JOSEPH SNEED and the ASSOCIATE JUSTICES, Greetings:

1. Notice is hereby given that Herman J. Grayson, Petitioner, hereby appeals to the Supreme Court of the United States from the final order filed in this action on August 8, 1975 by the above entitled Court.

2. The Honorables Justices Orell Trask and Joseph Sneed shall be named as Co-Respondents in this appeal.

3. This appeal is taken by authority of Title 28 United States Code Section 1253 and Rule 10 of the Supreme Court.

4. This appeal shall be founded upon the allegations related by Petitioner in his Petition For Writ of Mandamus, that Court denial was filed on July 8, 1975, and upon his Motion To Reverse The Order of 8 July 1975 That Denies The Petition For Writ of Mandamus and Motion To Provide Procedural Due Process of Law As Set Forth in Appellate Rule 21, that Court denial was filed on August 8, 1975.

5. By way of petition for writ of mandamus, the appeal shall be presented in the form of an application for an order directed to the Honorable Justices Orell Trask and Joseph Sneed in instruction to provide Petitioner with procedural due process of law as set forth in Federal Rules of Appellace Procedure, Title V, Extraordinary Writs, Rule 21, paragraph (b) by ordering an answer to the petition be filed by the Respondents and by setting the date for oral arguments.

6. The Clerk will please prepare a transcript of the record in this cause, for transmission to the Clerk of the Supreme Court, and include in said transcript one or more copies of Petitioner's Petition For Writ of Mandamus, and Motion to Reverse The Order of 8 July 1975.... and Motion to Provide Procedural Due Process of Law As Set Forth in Appellate Rule 21; and the Court Orders filed July 8, 1975 and August 8, 1975.

September 5, 1975

Respectfully Submitted,

Herman J. Grayson

Herman J. Grayson, Petitioner.

P.O. Box 961, Dallas, Texas 75221
1-214-233-0997